Those errors had obviously influenced his perception of his second letter. In our judgment there was no real evidence to suggest that there was malice. Even the correspondence of the respondents and their consultants contained errors. This occurred in the letter dated 18 March 1982 of the respondents' consulting engineers, Houkehua, para 2 of the respondents' letter of 9 July 1982 to DBCD and para 3 of the respondents' solicitors' letter of 14 September 1982 to DBCD.

In our view it is crucial that the two letters should be viewed in their correct context. Here you have a land owner writing to the minister setting out certain facts (which are correct) relating to an adjacent development and asking the minister to look into it to see if there was an irregularity in the approval granted. How the ministry and the relevant department would react to that was for them to decide. The ministry and DBCD were in possession of all the relevant plans and how the retaining wall was to be constructed. A slight error in the letter of 28 April 1982 can hardly be sufficient to form the basis of an action based on malicious falsehood.

In the result we would allow the appeal of the appellants and set aside the orders of the trial judge. Leave is given to the appellants to withdraw the action. Costs of the hearing on the cross-undertaking on damages and on the counterclaim before the High Court and of this appeal before this court shall be borne by the respondents. There shall also be the usual consequential orders.

Appeal allowed.

Solicitors: *Foo & Quek*; *Shook Lin & Bok*.

Reported by *Kevin Mathews*

Ong Kin Hong v Public Prosecutor

COURT OF CRIMINAL APPEAL (SINGAPORE) —CRIMINAL APPEAL NO 5 OF 1988
WEE CHONG JIN CJ, THEAN AND CHAN SEK KEONG JJ
30 JULY 1990

Evidence — Admissibility — 'Trial within a trial' — Whether findings can be imported into main trial where accused has elected to remain silent

The appellant was convicted by the High Court on the charge that between 10am and 12 noon on 24 December 1984 he committed murder by causing the death of Foo Jee Leng ('deceased'), a female aged 34. He appealed against his conviction. The appellant submitted that the trial judges erred by importing their finding during the trial within the trial that the appellant was a mendacious witness as the reason for rejecting the exculpatory parts of the appellant's statements and had also erred in taking into consideration the appellant's demeanour during the trial within a trial to assess his credibility and had thereby dismissed the defences based on the exculpatory parts of his statements.

Held, dismissing the appeal:

(1) It is to be observed that the appellant when called upon to enter on his defence elected to remain silent and the defence called no evidence. In those circumstances and having regard to those parts of the appellant's statements relied on as exculpatory, the trial judges rejected the submissions advanced by the appellant that it was open to the trial court to find that the appellant had established on a balance of probability the defences of grave and sudden provocation of self-defence or that the death was caused without premeditation in a sudden fight in the heat of passion upon a sudden quarrel without the appellant having taken undue advantage or acted in a cruel and unusual manner.

(2) The trial judges were entitled on all the evidence before the court to reject the defences which were based solely on the statements made by the appellants to Inspector Samadi.

Loh Lin Kok for the appellant.
Lee Sing Lit for the Public Prosecutor.

Cur Adv Vult

Wee Chong Jin CJ (delivering the judgment of the court): The appellant, Ong Kin Hong, was convicted by the High Court on the charge that between 10am and 12 noon on 24 December 1984 he committed murder by causing the death of Foo Jee Leng ('deceased'), a female aged 34. He appealed against his conviction. We dismissed his appeal and we now give our reasons.

The facts can be briefly summarized. At the material time the appellant was a member of the Singapore Footwear Merchants Association and the deceased was employed by it as a junior clerk. The body of the deceased was found by the association's senior clerk, Lau Yiok Tzong and Chaw Kim Meng, a member of the association.

She was found lying on the floor of a toilet of the association's premises at about noon on 24 December

1984. She was fully clothed, and lay in a pool of blood. The pathologist found the deceased to have extensive lacerations over her scalp, face and neck, and bruises on her neck, chest and abdomen. In the opinion of the pathologist the injuries were consistent with multiple blows having been inflicted by an instrument such as an iron pole. Severe force would have been used, such that life would have become extinct within a matter of minutes of the blows being inflicted. Any one of the blows would have been sufficient to cause the deceased to fall to the ground. It follows that a number of blows are likely to have been inflicted while the deceased lay on the ground, indicating a particularly ferocious and savage assault upon her.

The appellant was seen by a security guard at about 10.30am on the day of the offence, walking hurriedly away from the building in which the association's premises are situated. Although the guard, on his own admission, had only the back view of the accused in his sight and then momentarily, it was enough for him to identify the appellant, whom he had seen at the premises on previous occasions, at two identification parades held at Beach Road Police Station about a week after the crime was committed.

Shortly after the discovery of the offence, the toilet in which the body of the deceased was found was dusted for finger prints. The tap on one of the two basins, which was still running when the deceased was found, received particular attention. A print was lifted from the tap, which was subsequently compared with the prints of the appellant, who had been arrested and charged with the murder of the deceased on 27 December 1984. The comparison of the lifted print with those of the appellant established to the satisfaction of Acting Deputy Superintendent of Police, Koh Kong Song, who has been engaged in the science of identification of finger prints for some 16 years, that a right thumb impression found on the tap was that of the appellant.

Shortly after the crime was committed, the investigation officer, Inspector Samadi bin Aman, saw a roll of Sun-X solar film lying on a table in the association's premises. Sun-X film is a substance which is affixed to glass surfaces in order to keep out or reduce the rays of the sun. The film was also seen by the senior clerk of the association, and by the association's maid.

Evidence was led which established that the appellant's son had, on his father's request, purchased a roll of Sun-X for the appellant on the morning of the murder. He had left the film, and the receipt for its purchase, in the appellant's station wagon that morning. As a result of a search conducted by the police on 7 January 1985, the receipt was found in the vehicle, but there was no sign of the film.

When confronted by Inspector Samadi with the receipt, and with a second roll of Sun-X film which the appellant had instructed one of his employees to purchase after the murder was discovered, the appellant orally confessed to the murder, and led Inspector Samadi and a detective sergeant to a bridge spanning the Whampoa River into which the appellant said he had thrown the murder weapon. Inspector Samadi decided not to make any attempt to retrieve the murder weapon since he thought it might be futile. Later that same day, 7 January 1985, the appellant made a long written statement in which he confessed to killing the deceased, but asserted in exculpation that he had done so after an argument in which the deceased had insulted him. In response to the insult he had slapped the deceased, but wishing to put an end to the altercation, had proceeded to the toilet. He claimed, however, that the deceased rushed into the toilet, seized a 'sapu lidi' or broom made of fibre from the leaf of coconut trees, and proceeded to prod and strike the appellant's genitals with it. The appellant claimed that this assault by the deceased caused him to fall to the ground. Seeing an object lying close hand, the appellant had picked it up and struck the deceased with it.

At the trial, the defence disputed the admissibility of the oral and written statements made by the appellant to Inspector Samadi on 7 January 1985, asserting that they had not been made voluntarily. The sub-trial at which the admissibility of the statements was investigated lasted all of 14 days, at the end of which the trial judges ruled that the statements made on 7 January 1985 were made voluntarily, and were accordingly admissible. They concluded, beyond a reasonable doubt, that the statements were made by the appellant as a result of the appellant having been confronted by evidence which linked him to the crime, and that the statements were not the consequence of any threat made, or promise or inducement held out, to the accused such as would have rendered the statements inadmissible.

The statements having been admitted into evidence, the prosecution closed its case, at which point the appellant was called upon to make his defence. He had the choice of giving evidence on his own behalf, and calling witnesses, or remaining silent. The appellant chose to remain silent, and the defence called no evidence. Counsel for the appellant then submitted that his statements to Inspector Samadi on 7 January 1985 disclosed facts which justified the charge against the accused being amended by the court from one of murder to one of culpable homicide not amounting to murder. It was argued that the court should so reduce the charge on the grounds that the appellant, although having by his statements admitted to causing the death of the deceased, had disclosed facts which established on the balance of probability that he had caused her death in the exercise of the right of self-

defence; alternatively, in a sudden fight; or in the further alternative, as a consequence of being subjected to grave and sudden provocation by the deceased.

The trial judges, after carefully examining the exculpatory parts of the appellant's statements against all the other available evidence, and having done so, rejected them. They came to the conclusion that the accused had committed a premeditated assault upon the deceased, intending to kill her, and that he had brought onto the premises of the association, an iron rod or bar with which to achieve his purpose, which he threw into the Whampoa River after having achieved it. The trial judges found that there was evidence before them that, in the days immediately before the murder, the deceased had been wary of the appellant, not wishing to be left alone when he was in the vicinity. There was also produced in evidence a note written by the deceased a few days before she died which indicated that an incident had occurred involving the appellant which had distressed the deceased. In a written statement made to the police on the day of his arrest, the appellant spoke of rumours circulating in the association to the effect that he was lecherous, an allegation which he denied. The trial judges concluded that the appellant regarded the deceased to be the source of these rumours. They were satisfied beyond reasonable doubt that the appellant was guilty of the murder of the deceased and they accordingly convicted the appellant.

At the hearing before us, counsel for the appellant raised several arguments most of which he abandoned during the course of his arguments. Counsel submitted that the trial judges erred by importing their finding during the trial within a trial that the appellant was a mendacious witness as the reason for rejecting the exculpatory parts of the appellant's statements and had also erred in taking into consideration the appellant's demeanour during the trial within a trial to assess his credibility and had thereby dismissed the defences based on the exculpatory parts of his statements.

It is to be observed that the appellant when called upon to enter on his defence elected to remain silent and the defence called no evidence. In those circumstances and having regard to those parts of the appellant's statements relied on as exculpatory the trial judges rejected the submissions advanced by the appellant's counsel that it was open to the trial court to find that the appellant had established on a balance of probability the defences of grave and sudden provocation, of self-defence, or that the death was caused without premeditation in a sudden fight in the heat of passion upon a sudden quarrel without the appellant having taken undue advantage or acted in a cruel and unusual manner.

In our judgment the trial judges were entitled on all the evidence before the court to reject the defences which were based solely on the statements made by the appellant to Inspector Samadi. For all these reasons we dismissed the appeal.

Appeal dismissed.

Solicitors: *Loh Lin Kok.*

Reported by *Kevin Mathews*

Lee Hung Khoon v Yeo Tang Mui

HIGH COURT (SINGAPORE) — MOTION IN SUIT NO 1202 OF 1989
THEAN J
5 MAY 1990

Civil Procedure — Interim injunction — Inter partes stage — Where the balance of convenience lies — Failure to make full and frank disclosure at ex parte stage — Effect of failure — Whether injunction should be allowed to continue — Control of Rent Act (Cap 58, 1985 Ed), ss 2 & 16

The plaintiff applied for a continuation of an interim injunction granted to him whereby the defendant was restrained from locking or obstructing the entrances to certain premises, or from infringing or interfering with the plaintiff's tenancy rights in the premises. It was argued that the plaintiff was not entitled to the statutory protection since the premises in question were not domestic premises within the meaning of the Control of Rent Act (Cap 58, 1985 Ed). It was also argued for the defendant that the plaintiff had failed to make full and frank disclosure of material facts at the time of the ex parte hearing. The issue then was whether the injunction ought to be allowed to continue in view of the non-disclosure of material facts.

Held, allowing the plaintiff's application:

(1) The issue as to whether the premises were domestic premises within the meaning of the Control of Rent Act is a matter to be decided at trial. Also, the question of whether the plaintiff was in occupation of any part of the premises is a serious issue to be tried.

(2) The court has no doubt that in this case the balance of convenience is in favour of a grant or continuation of the interim injunction. If the injunction is granted, the status quo is preserved until trial; on the other hand, if it were refused, the plaintiff would be locked out and excluded from occupation of that part of the premises to which he claims and irreparable damage would be sustained by him.

(3) The court has a discretion in this case to continue the interim injunction, notwithstanding the non-disclosure of the material facts by the plaintiff at the ex parte application.

(4) The defendant had resorted to extra-legal methods to gain possession of the premises and oust the plaintiff therefrom, and if the injunction is not continued the defendant would be enabled to perpetuate her wrongful act; furthermore, if the plaintiff at the trial succeeds in establishing his claim, it may be difficult at that stage to grant him the appropriate relief sought.